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Applicants: C.C. Lambeth et al. Attorney Docket No.: WEYE115226
Application No.: 09/618,307 Group Art Unit: 1638
Filed: July 18, 2000 Examiner: D.T. Fox
Title: POLLEN POLYMIX PLANT BREEDING METHOD UTILIZING
MOLECULAR PEDIGREE ANALYSIS

RESPONSE TO RESTRICTION REQUIREMENT

Seattle, Washington 98101

October 10, 2002

TO THE COMMISSIONER FOR PATENTS:

In response to the Restriction Requirement mailed September 23, 2002, applicants elect Group II (Claim 20) for initial prosecution in this application. Election is with traverse. Election is without prejudice to applicants' right to prosecute the non-elected subject matter in a subsequent patent application.

Applicants traverse the restriction requirement for the following reasons. The Examiner argues that in the instant case the different inventions have different modes of operation and different functions. The Examiner argues that the invention of Group I involves a multitude of herbaceous plant species, and a multitude of starting materials and techniques for analysis of a multitude of products including RNA, protein and secondary metabolites, each not required by Group II. The Examiner argues that the invention of Group II involves tree species and DNA analysis not required by Group I.

Applicants note that Claim 20 is directed to a tree breeding method that includes the step of determining the pedigree of progeny trees using DNA analysis. Applicants note that the claims of Group I are directed to a plant breeding method, and therefore encompass a method of breeding trees. Applicants note that the plant breeding method includes the step of determining the pedigree of a plurality of progeny plants using molecular parental analysis. In some embodiments, the molecular parental analysis is DNA analysis (*see, e.g.*, Claim 16). Further, applicants note that independent Claim 1 and independent Claim 20 include the same steps, except that Claim 1 is directed to a plant breeding method, while Claim 20 is directed to a tree breeding method, and Claim 20 utilizes any methods of molecular parental analysis, whereas the sole embodiment of molecular parental analysis utilized in the practice of Claim 20 is DNA

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analysis. Thus, applicants submit that the inventions defined by the Examiner's claim Groups I and II do not have different modes of operation nor different functions. Consequently, applicants submit that the restriction requirement is improper and should be withdrawn.

Moreover, with respect to the election of species requirement, applicants submit that it is within the ability of one of ordinary skill in the art to utilize DNA markers and DNA marker analysis techniques, RNA markers and RNA marker analysis techniques, protein markers and protein marker analysis techniques, and secondary metabolite markers and secondary metabolite marker analysis techniques as forms of molecular parental analysis in the claimed plant breeding method. Thus, applicants submit that the Examiner's election of species requirement is improper and should properly be withdrawn.

Respectfully submitted,

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